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No. 80-1894

IN THE

# Supreme Court of the United States

OCTOBER TERM 1980

MICHAEL BEN-LEVI,

*Appellant,*

v.

SHARON E. BEN-LEVI,

*Appellee.*

On Appeal from the Superior Court of
the State of New Jersey, Appellate Division

## SECOND SUPPLEMENTAL BRIEF FOR APPELLANT

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## TABLE OF AUTHORITIES CITED

### CASES

*Goldfarb* v. *Goldfarb*,
264 Ga. 24, 268 S.E. 2d 648 (Sup. Ct. 1980). ..... 1

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### CONSTITUTION

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When a state court of last resort has decided a federal question in a way which is in conflict with the decision of another state court of last resort, Rule 17.1.(b) of this Court indicates that a contradiction of this type warrants special consideration for review. The existence of such a conflict has now come to the attention of the Appellant; therefore, he wishes to apprise the Court of this fact.

On June 11, 1980 the Supreme Court of Georgia ruled in *Goldfarb* v. *Goldfarb*, 264 Ga. 24, 268 S.E. 2d 648 (Sup. Ct. 1980) that the due process rights of a nonresident defendant parent are not violated "when, with full notice, a foreign state adjudicates his right to the custody of his children without personal jurisdiction over him." 246 Ga. at 26, 268 S.E. 2d at 650. In the instant case the Superior Court of New Jersey, Appellate Division expressed a similar view on November 17, 1980 in its Per Curiam.

On July 9, 1980, four weeks after the Georgia decision, Ohio reached the opposite conclusion. In *Pasqualone* v. *Pasqualone*, 63 Ohio St. 2d 96, 406 N.E. 2d 1121 (Sup. Ct. 1980) the Supreme Court of Ohio held that "[i]n a custody case . . . as in a child support or alimony case, it is not fair and reasonable to allow one party to bind the other party on the basis of his unilateral acts. . . . In this sense, *May* [v. *Anderson*, 345 U.S. 528 (1953)], in requiring jurisdiction over the person, survives today as good law." 63 Ohio St. 2d at 103, 406 N.E. 2d at 1127. The Court concluded that it is not bound by an out-of-state custody decree under the Full Faith and Credit Clause unless that state "has jurisdiction over the person of the . . . [nonresident] party involved sufficient under the Due Process Clause." 63 Ohio St. 2d at 96-97, 406 N.E. 2d at 1123.

The Supreme Court of Georgia and of Ohio reached conflicting decisions regarding the same federal question. Under review in both states were the jurisdictional requirements of Section 3 of the Uniform Child Custody Jurisdiction Act which grants jurisdiction to a forum state if a child has resided in that state for a minimum of six months. Personal jurisdiction over a nonresident defendant parent is not required by the Act at either initial or modification of custody proceedings. In reaching its respective conclusion, each court considered *May* v. *Anderson, supra,* and *Kulko* v. *Superior Court of California,* 436 U.S. 84 (1978). The parties in neither case sought review by this Court.

It is impermissible that there exist in the United States two opposing standards of justice relative to the constitutional right of a defendant to procedural due process of law under the Fourteenth Amendment to the Constitution of the United States. This is particularly so when the lives of minor children are adversely affected by this uncertainty. The instant case provides this Court with an opportunity to resolve this serious conflict.

Dated: August 28, 1981.

Respectfully submitted,

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